

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**JACQUELINE J. KINNETT/SPENCER,**

**CASE NO. 4:06CV3215**

**Plaintiff,**

**V.**

## ORDER

**RANDY KOHL , et al,**

## Defendants.

This matter is before the court on the plaintiff's motion for reconsideration. Filing No. 35. The defendants' summary judgment motions were granted, and judgment was entered against the plaintiff on July 17, 2007. Filing No. 35. The plaintiff claims she did not respond to the summary judgment motions because she requested an attorney at the outset of this case, and when she later contacted the court about getting a court-appointed lawyer, she was told she could not do anything on her case until the judge decided whether counsel would be appointed. Filing No. 35, p. 1. She has also filed evidence with her motion for reconsideration, and she argues that this evidence warrants relief from the judgments entered by the court.

Defendant Randy Kohl filed a motion for summary judgment on March 22, 2007. The court's memorandum and order granting this defendant's summary judgment motion was filed on June 19, 2007. The court held that the plaintiff's claims against defendant Kohl must be dismissed for failure to exhaust administrative remedies, and because the plaintiff failed to produce any evidence showing defendant Kohl was deliberately indifferent to the plaintiff's serious medical needs. See Filing No. 28. The court further noted:

At present, I do not see how the arguments presented by Dr. Kohl differ from those available to the remaining Defendants. However, I note that the remaining Defendants have not moved for the action against them to be dismissed, and consequently, Kinnett/Spencer's Complaint against them will remain.

Filing No. 28, p. 8. The plaintiff did not respond to the court's memorandum and order granting summary judgment in favor of defendant Kohl.

As to the remaining defendants, a second motion for summary judgment was filed on June 22, 2007. Filing No. 29. The plaintiff filed no response to this motion. Summary judgment was granted in favor of the remaining defendants, (Filing No. 33), and a Judgment of Dismissal with prejudice was entered against the plaintiff on July 17, 2007. Filing No. 34. Her motion for reconsideration, filed on July 26, 2007, seeks relief from that judgment.

The plaintiff's excuse for not responding to either motion for summary judgment does not warrant relief from the court's judgment. Assuming that at the time the first motion was filed, the plaintiff truly believed she must wait for court-appointed counsel to respond, the court's first order granting summary judgment notified her that she needed to respond to such motions. The court's order advised her that in response to a motion for summary judgment, she must "come forward with specific facts showing that there is a genuine issue for trial," (Filing No. 28, p. 2 (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986))), and absent doing so, a summary judgment would be granted. Despite the clear language of the court's order, she never challenged the first summary judgment ruling and did not respond to the second motion for summary judgment. The plaintiff has raised no credible excuse for not responding to either motion.

Moreover, the evidence submitted in support of her motion for reconsideration does not support relief from the court's judgment. Even with this additional evidence, the plaintiff has made no showing that she exhausted administrative remedies prior to filing this lawsuit, nor do the documents submitted with her motion for reconsideration support a claim that the named defendants were deliberately indifferent to her medical needs in violation of the Eighth Amendment.

THEREFORE IT IS ORDERED:

The plaintiff's motion for reconsideration, Filing No. 35, is denied.

Dated this 13<sup>th</sup> day of August, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge